

Edward, Robert, Thomas, John, William  
and Sarah Maddock, Infants, by Robert Respondents.  
Maddock their Prochein Amy

515. C. 15.  
18

## The Respondents CASE.

Will dated 23  
Nov. 1720.

**T**HOMAS LORD, late of Hampstead, in the County of Middlesex, deceased, being possessed of a Personal Estate to the Amount of 3000*l.* by his Will gave to his Brother William Lord, since deceased, 10*l.* per Annum for Life, to be paid by his Executrix by four equal Payments, and gave his Niece Alicia Staines, then Wife of the Appellant, all the Estate he should die possessed of, or interested in, either in Possession, Reversion or Remainder; but declared, it was his Mind and Will, that the Interest, or other Produce thereof, should be for the sole Use and Benefit of his said Niece Alicia Staines, separate and apart from the Appellant, or any other Husband, and that her Receipt, notwithstanding her Coverture, should be a sufficient Discharge for any Sums of Money to her paid; and after the Decease of his said Wife, he gave and bequeathed all his said Estate unto his Executrix, in Trust to pay the yearly Interest, and Produce thereof, for the Maintenance and Education of such Child or Children as should lawfully be begotten by the Appellant on the said Alicia Staines, until they should attain their respective Ages following, *viz.* if Sons, the Age of 21 Years, if Daughters 18 Years; and when they should attain such respective Ages, that then his said Executrix should pay them their several Proportions thereof, Share and Share alike; and for want of such Issue, he gave and bequeathed all his Estate unto the Respondents, Children of Sarah Maddock, late Wife of Edmund Maddock, Share and Share alike, and appointed Alicia Staines, Residuary Legatee, and sole Executrix, directing her to pay one other Legacy as a Charity.

16 Sept. 1723. Thomas Lord died, and on the 20th of the same Month, Alicia Staines, then the Appellant's Wife, proved the said Will in the Prerogative Court.

Bill Mich. 1723. The Respondents being the only Children of the said Sarah Maddock, deceased, by Edmund Maddock their Father, exhibited their Bill against the said Appellant, and the said Alicia his Wife, setting forth, That they had applied to the Appellant and his Wife for an Account of the Testator's Estate, which they had refused to give, but threatened to go beyond Sea, and conceal themselves and the Testator's Estate; that the said Alicia Staines had no Children, nor in Likelihood of having any; that the Testator owed few or no Debts at his Death, and prayed a Discovery of what Debts the Testator owed, and to whom, and for what, and why the same were unpaid, and for an Account of the said Testator's Personal Estate, and that the same might be secured for the Respondents Benefit.

Resp. Affirm. 12 Dec. 1723. The Appellant and Alicia his Wife put in their Answer, and set out an Account of the Testator's Personal Estate which they had possessed themselves of, consisting of 490*l.* South-Sea Stock, and 490*l.* South-Sea Annuities, two South-Sea Bonds, and one East India Bond for 100*l.* each, of seven Messuages in Monmouth-Street in Spittlefields, for the Residue of a Term of 74 Years, let at 24*l.* per Annum, clear of Ground Rent and Taxes, and of two Messuages built on a Piece of Ground, formerly Parcel of the Laundry-Garden belonging to Leicester-House, for the Residue of the Term of 40 Years, one let at 27*l.* per Annum, the other at 27*l.* per Annum, and some Cloaths, Gold Rings, and Money, to the Value of about 4*l.* admitted the Deeds, Writings, and Securities relating to the Testator's Estate, to be in their Custody, and submitted to the Court, whether the said Testator's Personal Estate ought to be subject to such Contingency as in the Will, and deny they ever said the Testator's Estate was not sufficient to pay his Debts and Funeral Expences, and said, that the Testator owed no other Debts than as aforesaid, but that they had disbursed in and about his Funeral, and otherwise, several Sums particularly mentioned in the Answer, amounting to 25*l.* 1*s.* 8*d.*

The Respondents replied, and examined several Witnesses.

5 May 1724. The Cause was heard before his Honour, and the Appellant and his Wife, having by their Answer set forth a Particular of the Testator's Estate, his Honour did not think fit to direct an Account to be taken thereof, but ordered that the Appellant and his Wife should not transfer the Testator's Stocks, or assign his Leases, or receive in any of his Debts, without Application to the Court so to do.

The Appellant and his Wife were both served with a Writ of Execution of the said Decree, and the Respondents likewise caused the same to be entered at the South-Sea House, whereby

the Appellant was prevented from selling the Stock and Annuities, which still continues in the Books of the South-Sea Company in the Testator's Name.

11 Jan. 1726. *Alicia Staines*, the Appellant's Wife, died without Issue, whereby the Suit abated.

Bill Reviv. and Suppl. *Hillary* 1726. The Respondents brought their Bill of Revivor and Supplemental Bill against the Appellant, and pray'd, that the Suit might stand revived, and the Respondents might account for the Residuum of the said Testator's Personal Estate, and pay and deliver over the same to the Respondents.

Resp. Affirm. 14 Mar. 1726. The Appellant put in his Answer thereto, and set out, that *Alicia* his Wife had, by his Permission, made her Will, dated the 9th of October 1724, and appointed the Appellant Sole Executor and Residuary Legatee, and submitted to the Court, whether the Respondents, under the Will of *Thomas Lord*, were intitled to his Personal Estate upon the Death of his Wife without Issue, or whether she had not Power to dispose thereof by her Will, and how far he should be accountable to the Respondents for the Personal Estate of the Testator come to his Wife's Hands.

17 May 1727. The Cause came again to be heard before his Honour the Master of the Rolls, who Decreed the Appellant to account before Mr. *Elde*, for the Testator's Personal Estate come to his Hands, or to the Hands of *Alicia* his late Wife, deceased, or any other Person for their Use, and to produce all Books of Accompt, and to be examined upon Interrogatories, as the said Master should direct; in taking of which Accompt, the Master was to make the Appellant all just Allowances, and what of the said Testator's Personal Estate should upon the said Accompt appear to be in the Appellant's Hands after all just Allowances deducted, it was decreed, That the Appellant should pay and deliver over the Securities for the same into the *Bank of England*, to be placed to the Account of the Accomptant-General in this Cause, to be put out at Interest for the Benefit of the Respondents the Infants, until their Ages of 21 Years; and the Consideration of Costs was reserved till after the Report made, and that the Appellant should not alien any Part of the Testator's Estate.

28 Oct. 1727. The Appellant appealed to the Lord Chancellor, when his Lordship dismissed the Appeal, and confirmed the said Decree.

13 Nov. 1727. The Respondents exhibited their Charge before the Master, of the Personal Estate of the Testator come to the Appellant's Hands, and charged them with no more than what was admitted by the 1st Answer.

11 Jan. 1727. The Appellant exhibited a Discharge, and therein insisted (notwithstanding the Decree) that he, and not the Respondents, was intitled to the whole Personal Estate, and craved an Allowance for the Diet, Servants Wages, Nursing, Attendance, and Debts of the Testator, several Sums, amounting in the Whole to no less then 957*l.* though no Allowance is craved by either of his Answers, save several small Sums amounting to 25*l.* 1*s.* 8*d.* and no more.

The Master went through the Charge and Discharge, and being ready to make his Report, the Appellant appealed from the said several Decrees to your Lordships.

1 April 1728. Your Lordships were pleased to Order, That the Respondents should be at Liberty to prosecute that Part of the Decree appealed from relating to the Delivery over of the Securities into the *Bank*, notwithstanding the Appeal, and appointed a short Day for hearing the Appeal.

30 April 1728. Your Lordships were pleased to affirm the Decree of the 17th of May then last, with a Variation as to the Manner of the Appellant's accounting, which is, that the Appellant do account for what of the Testator's Personal Estate came at any time to his Hands, or to the Hands of any other Person for his Use; And also for what of the Testator's Estate came to, or was in the Hands of his late Wife *Alicia*, or to the Hands of any other Person for her Use, since the 5th of May 1724, or at any time thereafter; And that an Account should be likewise taken of what of the Testator's Personal Estate came to the Hands of the said *Alicia Staines*, after the Testator's Death, to the 5th of May 1724, which was not paid or delivered over by her to her Husband; and that what should be found so due from her, should be paid by the Appellant, her Executor, out of Assets, and applied in the same manner as the Estate that should appear to be in the Appellant's Hands; and if he did not admit Assets, an Account to be taken thereof, and as far as he had Assets, he was to satisfy the said Demand in a Course of Administration.

The Appellant took all Opportunities of delaying the Accompt, which consisted not of above 10 or 12 Items, upon Pretence that the Method of Accompting was now varied: And therefore,

15 May 1728. The Appellant exhibited a new Discharge before the said Master, and thereby insists on a new Defence contrary to his Answer, *viz.* that no Part of the Personal Estate of the Testator ever came to his Hands, and the same Day exhibited another Paper, which he called a Surcharge, and thereby insists on an Allowance of several Sums out of the Testator's Personal Estate, amounting to no less than 963*l.* 2*s.* though not thought of on putting in his Answer.

14 May 1728. The Respondents being apprehensive that the Appellant carried on his Defence with the Testator's Personal Estate, and that the same would be much wasted thereby, did apply to the Master for his Certificate, in order to obtain a proper Relief for the Security of the Personal

Personal Estate, and the Master did thereupon certify, that there was in the Appellant's Hands of the Testator's Personal Estate, two *South-Sea Bonds*, and one *East-India Bond* for 100*l.* each, besides the *South-Sea Stock* and *Annuities*. That the Appellant having exhibited a Discharge, and thereby craved an Allowance of several large Sums of Money, as due to him for the Testator's Diet and Lodging for seven Years before his Death, and for the Appellant's own, and Wife's, and Servants Attendance upon the Testator within that Time, and for Linen and Woollen used and destroyed by the Testator in his Sickness, and for Money paid Physicians and Apothecaries in his Illness, and for Money paid since the Testator's Death for his Debts, Legacies, and Funeral, and the Appellant having desired Time to examine Witnesses to make out his Discharge, and the Respondents Father declaring that the said Personal Estate was in Danger of being imbezzled, unless proper Methods were taken to prevent it; he did conceive that the securing the Stock and Annuities, and bringing in of the said Bonds would be a Means to shorten the Proceedings, and prevent Delay.

The Appellant refusing to comply with any Part of the said Decree, but standing in Contempt to an Order of Commitment against him, for not producing before the said Master his Books of Account, and Papers pursuant thereto, and having taken two Setts of Objections to the said Report, and given a Notice of Motion to discharge it, the Respondents on the 3d. of June 1728, moved the Court, that the Appellant might bring the *South-Sea*, and *East-India Bonds* into the Bank; but it appearing by the Appellant's Affidavits, that he had received the Principal and Interest on the two *South-Sea Bonds* before the first Decree at the Rolls of the 5th of May, 1724. it was ordered, that he should forthwith deliver over into the Bank the said *East-India Bond* for 100*l.* unless Cause, at which Time the Court would consider of the Master's Report.

The Appellant, to avoid a Commitment for not producing his Books and Papers, but to evade the Intention of the Decree, did in the mean Time produce before the Master two old Almanacks in the Years 1694 and 1695, of no manner of Use, and some Acquittances, but kept back all the Deeds and Writings relating to the Leasehold Estate.

7 June 1728. The Appellant came to shew Cause against the Order *Nisi* of the 3d of June, and moved to discharge it, and also the Master's said Report; and it appearing by the Appellant's own Affidavit, and the Affidavit of one *Barnard*, whom the Appellant served as a Porter, that *Barnard* bought the said *East-India Bond* of the Appellant's Wife on the 14th of July, 1724, for 103*l.* 10*s.* which being after the Decree at the Rolls of the 5th of May 1724. the Court disallowed the Cause, and ordered the Appellant should forthwith pay into the Bank the said Sum of 103*l.* 10*s.* for which the *East-India Bond* was sold, subject to the Order of the Court; and it appearing the Appellant was in mean Circumstances, and in Possession of a Leasehold Estate, devised to the Respondents, and the Deeds, and Writings relating thereto; it was ordered, that the Appellant should produce before the Master on Oath, all the Deeds and Writings relating to the said Leasehold Estate, and that a Receiver should be appointed thereof, and that the Master should proceed to take the Account, *de Die, in Diem.*

The Appellant refused to obey this Order in any respect, until he was served with a Writ of Execution thereof, and afterwards, *viz.* 21 June 1728. paid the 103*l.* 10*s.* into the Bank, and the same Day brought the Deeds and Writings relating to the Leasehold Estate, before the Master, who appointed a Receiver of the Estate in *Spittle-Fields*, the Lease of the Houses in *Leicester-Fields* expiring in the Appellant's Wife's Life-time.

4 July 1728. The Appellant further exhibited a fourth new Discharge, intitled, *The Appellant's further Discharge*, being an Account of Allowances craved by him, out of the Personal Estate of the Testator *Thomas Lord*, deceased, and thereby, and by splitting some of the gross Items in his former Discharges, makes his Allowances thereby craved, to amount to 780*l.* 4*s.* 11*d.*

To prove this Discharge the Appellant examined no less than thirteen Witnesses, and to keep the Examination open, added and altered his Interrogatories before the Master three several Times, and examined some of his Witnesses, and particularly one *Rachel Powell* three Times over, and by this means spun out an Examination to the Length of 215 Sheets of Paper, and so hung the Respondents up for near 12 Months together.

This long and tedious Examination tending to prove the Testator being bed-ridden for several Years, and his Incapacity to manage his own Affairs, put the Respondents upon an Inquiry who had received the Income of the Testator's Estate during that Time, when it was discovered, that the same was received by the Appellant; whereupon the Respondents were forced to exhibit a further Charge of such Sums of Money, being the Income of the Testator's Estate, as had been received by the Appellant during such the Testator's Illness.

21 April 1729. The Appellant exhibited a fifth further Discharge, and thereby craves an Allowance of several Sums for Nursing and Attending the Testator, amounting to 111*l.* 11*s.* 6*d.* more than what was included in his four former Discharges, and thereby insists, that the Income of the Testator's Estate was by him paid to the Testator, as he received it. And the 9th of May

9 May 1729. *May 1729.* the Appellant exhibited a sixth further Discharge, and thereby craves an Allowance of the further Sum of 15*l.* for receiving the Income of the Testator's Estate, in his Illness, and insists, that he ought not to be charged with the two South-Sea Bonds, because he gave his Wife the Money which he received for them; nor with the East-India Bond, because his Wife sold it to his Master, Mr. Barnard, the 14th of July, 1724. without his Privity.

After these six several Discharges brought in by the Appellant, and various kinds of Defences by him set up, to amuse the Respondents and gain Time, and after the Master had duly considered thereof, and of all the Appellant's Proof, prepared a Draught of his Report, to which the Appellant, at different Times, for Delay, took no less than 28 Objections, amounting to 47 Sheets of Paper: And at length,

12 June 1729. Mr. Elde, the Master, made his Report, and certified, That he found that *Thomas Lord*, the Testator, died the 16th of September 1723, and that about seven Years before and unto the Time of his Death; he lodged, dined, and boarded the Appellant, who had craved before him, an Allowance of several large Sums of Money for the said Testator's Diet, Washing, and Lodging, and for the Wages and Diet of Servants and Nurses kept to attend upon him; and also for his, the Appellant's, and his Wife's own Personal Care, Trouble, and Pains, in waiting on the Testator, and looking after his Affairs within the aforesaid Time: But that on the other hand he found, that the Testator, during the whole seven Years that he lodged and boarded with the Appellant, and unto and at the Time of his Death, was possessed of a Personal Estate, consisting of several Leasehold Houses in *Leicester-Fields* and in *Spittle-Fields*, in *Com: Middlesex*, Stock in the *South-Sea Company*, and *South-Sea* and *East-India Bonds*, the annual Income whereof was about 140*l.* and that the Testator, during the whole Time he lodged with the Appellant, was a very sickly and infirm Man; and for the last three Years of his Life, being seized with the Dead Palsey, was quite bed-ridden, unable to feed or help himself, and altogether incapable of managing and looking after his Affairs; and that during such Time of the Testator's Incapacity, the Appellant *John Staines* took Care of his Business, received the Rents of his Houses, and Dividends and Interest of his Stock and Bonds; and *Alicia*, the Appellant's Wife, had free and constant Recourse to the Testator's Money: And the Appellant and his Wife having by their Answer to the Plaintiffs original Bill, affirmed, that the Testator left little or no ready Money behind him at his Death, did certify, he conceived that the aforesaid Income of the Testator's Estate received, during the Time he so lodged and boarded with the Appellant, and unto the Time of the Testator's Death, was apply'd and expended in the Maintenance of the Testator, and in the Wages and Maintenance of the Servants and Nurses kept to attend him, and in making a Recompence to the Appellant and his Wife for their Care and Trouble about the Testator and his Affairs, and was and ought to be deemed sufficient for that Purpose, and that he hath therefore placed the Income of the said *Lord's* Estate against his Maintenance, while he so lodged and boarded with the Appellant, and hath not thought fit to make the Appellant any further or other Allowance in respect thereof.

And further certify'd the Devise of the Personal Estate by the said Will; and that upon the Testator's Death, *Alicia* accordingly possess'd herself of the Testator's Personal Estate, and enjoy'd the Income and Profits thereof unto the Time of her Death, which happen'd the 11th of January 1726, without Issue; whereupon the Respondents the Children of *Sarah Maddock*, by the said *Edmund Maddock*, became intitled to the Testator's Personal Estate by Virtue of the said Will; and that he had proceeded to take an Account thereof, and found that the Lease of the Houses in *Leicester-fields* expired in the Life-time of *Alicia Staines*: That a Receiver by him appointed, by Order of Court, was, in Receipt of the Rents of the other Houses in *Spittle-fields*, for the Respondent's Benefit; that the Testator's Stock, which, after all Additions made thereto by the Company, amounted to 980*l.* had, pursuant to an Act of Parliament, been divided, and that one Moiety remain'd in Stock, and the other in Annuities, and in the Companies Books in the Testator's Name:

And found, that after the Testator's Death, *viz.* the 4th of January 1723, the Appellant receiv'd of the *South-Sea Company*, for Principal-Money owing on two *South-Sea Bonds* belonging to the Testator at his Death, 200*l.* with which he charg'd the Appellant in the first Schedule to his said Report, with Interest from the Death of *Alicia* his Wife:

And found, that the Appellant's late Wife, the 14th of July 1724, sold one *East-India Bond* for 100*l.* Principal Money, belonging to the Testator at his Death, unto *Thomas Barnard*; and that the Money receiv'd on Sale thereof, was, pursuant to an Order of Court, paid by the Appellant into the Bank the 21st of June 1728, under the Direction of the Accountant-General; and that in the said first Schedule he had charg'd the Appellant with Interest of 100*l.* from the Death of *Alicia Staines* unto the said 21st of June 1728.

And found, that the Appellant, after the Testator's Death, receiv'd, for Arrears of Rent owing to the Testator in his Life-time, the several Sums set forth in the said first Schedule; the Total of which first Schedule amounts to 256*l.* 2*s.* 10*d.* and is the Whole of the Charge made on the Appellant in respect of the Testator's Personal Estate; and hath thereout allow'd the

the Appellant, for Money by him laid out and expended in the Testator's Funeral Expenses, Debts and Legacies, the several Sums in the second Schedule thereto annex'd, amounting to 48 £ 3 s. 6 d. and being deducted out of the said 256 £. 2 s. 10 d. reduces the same to 207 £. 19 s. 4 d. which he found to be the Sum remaining in the Appellant's Hands of the Testator's Personal Estate.

14 Nov. 1729.  
Order on ar-  
guing Excep-  
tions.

To which Report the Appellant took nine several Exceptions, and the Respondents obtain'd an Order of the 21st Day of June last for setting down the Exceptions to be argu'd before the Lord Chancellor, for hearing the Cause at the same Time on the Equity reserv'd as to Costs; and on the 14th Day of November last, on hearing Council on both Sides, his Lordship was pleas'd to over-rule all the said Exceptions, save the third, which the Appellant then waved, and order'd the Appellant to pay the Respondents their Costs since your Lordships Decree, to be taxed by the said Master.

Pursuant to which the said Master, on the 6th Day of December last, taxed the Respondents their Costs at 128 £. 18 s. 6 d. and the Respondents having sued out a Writ of Execution against the Appellant, to compel his Payment of the said Sum of 207 £. 19 s. 4 d. reported to be in his Hands, of the Testator's Personal Estate, and also a Subpœna for the said Sum of 128 £. 18 s. 6 d. Costs; and the Appellant absconding, to avoid being prosecuted for the same, on the 13th Day of December last, the Court order'd, that Service of the said Writ of Execution and Subpœna for Costs on the Appellant's Clerk in Court, should be good Service on the Appellant; and the Appellant stood in Contempt to an Attachment with Proclamation for Non-payment thereof.

That the Appellant, by his Litigation and various Defences, set up against the poor Respondents just Demands, having spent the Whole of the Testator's Personal Estate, reported to be in his Hands; and being render'd incapable of clearing his said Contempts, and knowing he can be in no worse Condition than he is, hath preferr'd his Petition and Appeal to your Lordships, in which he hath misrepresented several Facts, and prays, That so much of the said Order, of the 14th of November last, as over-rules the Appellant's First, Second, Fifth, Sixth and Seventh Exceptions, and orders the Appellant to pay Costs, may be revers'd, and that the Appellant may have all just Allowances made to him, and his Costs of the said several Suits; which said First, Second, Fifth, Sixth, and Seventh Exceptions are as follow; viz.

Exception I. For that the said Master by his said Report hath certified that the said Testator *Thomas Lord*, during the whole seven Years that he lodg'd and boarded with the said Appellant *Staines*; and at the Time of his Death, was possess'd of a Personal Estate, consisting in Leasehold Houses, South-Sea Stock, and in South-Sea and East-India Bonds, the annual Income whereof was about 148 £. and that the said Testator was sickly and infirm during the whole Time that he lodg'd and boarded with the said Appellant; and for the last three Years of his Life, being seiz'd with a dead Palsey, was quite Bed-ridden, and unable to feed or help himself, and altogether incapable of managing and looking after his Affairs; and that during the Time of such his Incapacity, the said Appellant *Staines* receiv'd the Rents of his Houses, and the Interest of his Stock and Bonds; and that the Appellant's late Wife had free and constant Recourse to the said Testator's Money; and that she and the said Appellant having, by their Answer to the Respondents Original Bill, affirmed, that the said Testator left little or no ready Money; the said Master hath therefore certified, that he doth conceive the Income of the Testator's Estate receiv'd during the Time he lodg'd and boarded with the said Appellant, and unto the Time of his Death, was apply'd and expended in the Maintenance of the said Testator, and in the Maintenance of his Servants and Nurses kept to attend him; and in making a Recompence to the Appellant and his late Wife for their Care and Trouble about the said Testator and his Affairs, and was, and ought to be deem'd, sufficient for that Purpose; and that he hath therefore plac'd the Income of the said Testator's Estate against his Maintenance, while he so lodged and boarded with the said Appellant *John Staines*; and that he hath not thought fit to make unto the said Appellant any farther or other Allowances in respect thereof, which the said Master ought not so to have certified, in regard it doth not appear, by the Proofs taken in this Cause, that the annual Income of the said Testator's Estate, during all the said seven Years, was 140 £. or was all receiv'd by the said Appellant *Staines*, during the said seven Years, and during all the Time of the said Testator's being unable to manage and look after his Affairs: Nor doth it appear what Monies the said Appellant's said late Wife had, or received in the said Testator's Life-time, which belonged to the said Testator, or how she disposed thereof, or that she ever had, or received any of his Monies otherwise than to pay or apply the same as he directed; or that any Part of the Testator's Money, received by her in the Life-time of the said Testator, ever came to the Hands, Use, or Possession of the said Appellant *Staines*, or to the Hands, Use, or Possession of any other Person or Persons, for his Use. And for that it doth appear by Proofs taken in this Cause before the said Master, that all the Rents, Dividends, and Interest for Monies, which the said Appellant *Staines* did ever at any time receive in the said Testator's Life-time, by the Order, and on the Account of the said Testator, were constantly paid over by the Appellant *Staines* to the said Testator: And that the said Testator, within a very short Space of

Time, next before his Death, did own and acknowledge, that all the Sums of Money which the said Appellant *Staines* had received on his the said Testator's Account, had always been faithfully and honestly paid to him the said Testator, by the said Appellant *Staines*; therefore the Appellant *Staines* ought not to stand charged with any of the Rents, Dividends, and Interest, which he received on the Account, and by the Order, and for the Use of the said Testator in his Life-time: Nor ought the same to be set against the several Sums of Money due to the said Appellant from the said Testator, at the time of his Death.

Excep. II.

For that the said Master, by his said Report, hath charged the said Appellant *Staines* with the principal Sum of 200*l.* received by him of the *South-Sea Company*, the 4th of *January 1723*, on two *South-Sea Bonds* for 100*l.* each, which belonged to the said Testator, and with the Sum of 24*l. 2s. 4d.* for the Interest thereof, from the Death of the said Appellant's late Wife, until the 11th of *June 1729*, which the said Master ought not to have done; for that it fully appears by the Proofs in this Cause, and otherwise, that the said 200*l.* was, at the Request, and during the Indisposition of the Appellant's late Wife, received by the said Appellant, of the *South-Sea Company*, by a Bank Note of that Value: And that the said Bank Note was delivered to the Appellant's said late Wife by the said Appellant, upon the same Day whereon he receiv'd the same (she being Executrix of the said Testator, *Thomas Lord*) And for that the said Appellant is not chargeable for any Part of the said Testator's Estate, which came to the Hands or Use of his said late Wife, on, or before the fifth of *May 1724*, which hath not been paid or delivered over to the said Appellant, otherwise than out of Assets of his said late Wife: And in regard the said Bank Note was not re-delivered to the said Appellant by his said late Wife, nor any of the Monies received by him, arising thereby: And for that no Assets of the Appellant's said late Wife ever came to the Hands, Use, or Power of the said Appellant, the said Appellant ought not to stand charged with the Sum of 200*l.* or with any Interest for the same.

Excep. V.

For that the said Master, in and by his said Report, hath not allowed the said Appellant *Staines* 40*l. per Annum*, or any other reasonable yearly Allowance, or Sum of Money for the said Testator's Diet, Washing, and Lodging at the Appellant's House, during seven Years, which said Master hath certified the said Testator lodged, dietet, and boarded with the said Appellant, nor hath allowed the said Appellant 32*l.* or any other reasonable Sum of Money, for the Diet, Washing, and Lodging of the Maid-Servant, or Maid-Servants, who was, or were hired by the Appellant, to attend the said Testator, nor the Sum of 6*l.* or any other Sum of Money for her or their Wages, altho' it doth appear by several Proofs taken before the said Master, that the said Testator's Diet, Washing, and Lodging, during the said seven Years, were worth 40*l. per Annum*; and that the Diet, Washing, and Lodging of the said Maid-Servant, or Servants, was or were worth 32*l.* and that the Appellant *Staines* paid 6*l.* for the Wages of such Servant or Servants.

Excep. VI.

For that the said Master, in and by his said Report, hath not allowed to the said Appellant 20*l. per Annum*, or any other reasonable yearly Allowance, or Sum of Money on Account of the Appellant's late Wife attending upon the said Testator as his Nurse, for seven Years next before his Death, nor hath the said Master allowed to the said Appellant 40*l. per Annum*, or any other reasonable Sum of Money for his Trouble, Pains, and Care in attending upon the said Testator, during his Indisposition, nor hath he allowed the said Appellant 40*l.* or any other reasonable Sum of Money, for the Bedding, Woollen, and Linen which belonged to the said Appellant, nor the Sum of 2*l. 10s.* for an easy Chair, which were all used, spoiled, and destroyed by the said Testator, during the Time of his Indisposition.

Excep. VII.

For that the said Master by his said Report, hath not allowed to the said Appellant the Sum of 22*l. 10s.* paid by him or his Order to the Testator's late Brother *William Lord*, on Account of an Annuity of 10*l. per Annum*, given unto the said *William Lord*, by the said Testator's last Will and Testament, nor the Sum of 20*l.* expended and laid out for Mourning for the Appellant and his late Wife, as Part of the said Testator's Funeral Ex-pences, nor hath the said Master allowed the Appellant any thing on Account of what the said Appellant paid to Physicians and Apothecaries for the said Testator, during his Indisposition for three Years next before his Death.

Answer to  
Excep. I.

It fully appears in the Cause, that the Testator was for about seven Years before his Death possessed of a Personal Estate, the Income of which was, above 140*l. per Annum*; that the Testator was Bed-ridden, and helpless for about three Years before his Death, during which, the Appellant received the Income of the Testator's Estate, and the Appellant's Wife had constant Recourse to the Testator's Money; and the Appellant admits in his Answer, that all the Testator's ready Money left at his Death, together with his Apparel and Rings, came but to 4*l.* therefore if the Appellant's Answer be true, the Income of the Testator's Estate must necessarily have been expended, as the Master reports it was, because the Testator was Bed-ridden; and it is not pretended he had any other way to consume his Money: And the Respondents humbly apprehend, it is absurd for the Appellant to say, as he does in Effect, by his Exceptions, that the Testator had an Income of 140*l. per Annum*, and upwards, which the Testator from time to time put in his Pocket; that no

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Part of it was used in any one Necessary of Life for the Testator: And the Appellant by his Answer says, That all the Testator's ready Money left at his Death, together with his Wearing Apparel and Rings, amounted only to 4*l.*

Answer to  
Excep. II.

The Principal Money due on the two *South-Sea Bonds*, was paid to the Appellant himself on the 4th Day of *January 1723*, and the Master has charged him therewith, because by the Decree, as affirmed by your Lordships, the Appellant is to account for what of the Testator's Personal Estate at any time came to his Hands; and as to the Appellant's Evidence of his having afterwards paid his Wife the Money he received for the two Bonds, the same is only a loose Deposition of a poor illiterate Woman taken upon her third Examination, after the Publication of the Respondents Proof that the Appellant had received the Money due on the Bonds the 4th Day of *January 1723*, and which, when considered, the Respondents humbly apprehend, cannot be credited; and if the Appellant did pay the Money over to his Wife, yet he having intermeddled with the Receipt of the Sums which were Part of the Principal Money, to which she had no separate Right (she being only separately intitled to the Interest thereof) the Husband, who had actually received the Money, voluntarily put it into his Wife's Power, he ought to be answerable for it, and 'tis not easy to imagine he would do it, unless he was some way or other to have the Benefit of it.

Answer to  
Excep. V.

This Exception is within the Reason of the First, besides the Appellant in his Answer to the Respondents Bill, which requires an Account of what Debts the Testator owed at his Death, expressly says, that the Testator owed 4*l.* for Ground-Rent, and that to his Knowledge or Belief, the Testator did not owe any thing to any other Person or Persons whatsoever; and it is not to be imagined, that the Appellant could possibly have forgot to have inserted in his Answer, the several large Demands now set up in his 1st, 5th, 6th and 7th Exceptions, had the same been just, because in the same Answer, the Appellant has given a Particular of several small Sums which he claims an Allowance of out of the Testator's Estate.

Answer to  
Excep. VI.

This Exception is likewise within the Reason of the 1st and 5th: Had the Demands of the Appellant mentioned in this Exception been just, he could not possibly have forgot them in his first Answer; but supposing he had made such an Omission by Mistake in his first Answer, he would scarce have omitted the same in his second Answer, especially when such second Answer was put in after the first Decree at the Rolls, and the Appellant found the Opinion of the Court of Chancery to be, that the Limitation in the said Testator's Will of his Personal Estate to the Respondents was good, and that consequently he was accountable for the same; and the Respondents humbly apprehend, that the large Demands claimed by the Appellant in the several Exceptions out of the Testator's Personal Estate, is mere a Invention and Contrivance of the Appellant's Sollicitor, not thought of, or pretended until after all other Defence had failed him, both in the Court of Chancery and House of Lords.

Answer to  
Excep. VII.

As to the first Branch of this Exception, the Annuity therein mentioned of 10*l. per Ann.* is given by the Testator's Will to *William Lord* for Life, to be paid by his Executrix Quarterly, and the Interest and Produce of the Testator's Estate charged with such Annuity is given to his Executrix; and such Annuity being to be paid Quarterly, and uncertain, by reason of the Contingency of the Life of the Annuitant, could not in the Nature of it be deducted by the Executrix, or the Appellant, as her Representative, out of the Principal or Bulk of the Testator's Estate; and as the Annuitant died in the Life-time of the Appellant's Wife, such Annuity ought to be paid and deducted out of the Income of the Testator's Estate, and not out of the Principal belonging to the Respondents; and as to Mourning claimed by the Appellant in this Exception, the same is not allowed by the Testator's Will, and if the Appellant and his Wife were mindful, on the Death of so good a Benefactor, to put themselves in Mourning, it ought not to be at the Respondents Charge; but besides this, it is the more extraordinary to insist for Mourning on Behalf of the Appellant, who appears to be a Quaker, when it is known that those People do not use to go into Mourning: As to the last Branch of this Exception, about Physicians and Apothecaries, the Demand itself is uncertain, and no certain Proof about it, and the Appellant and his Wife receiving the Income and Profits of the Testator's Estate, the same is allowed to them in lieu of Maintenance and Necessaries for him.

Objection.

As to the Costs reserved by the Decree at the Rolls, the Appellant will object, that he is only as an Executor, that he put in a fair Answer, and only submitted his Right to the Judgment of the Court, and by his Answer did not insist thereon.

Answer.

'Tis to be observed, that no Costs are allow'd to the Respondents for any thing that happen'd before your Lordships Decree, since which Time it appears, that the Proceedings have been carried on by the Appellant in a very vexatious and expensive manner, and the Sollicitor concerned therein has been committed by the Lord Chancellor for his Abuses in carrying on the same.

*FOR which, and other Reasons, the Respondents humbly hope the said Order of the 14th Day of November last is agreeable to the Rules of Equity, and that the same shall be Affirmed, and that the said Appeal shall be dismissed with Costs.*

THO. LUTWYCHE.  
N. FAZAKERLEY.

Montgomery v Dyer

John Staines - - - Appellant.

Edw. Maddock, & al<sup>l</sup> Infants, Respondents.

*The Respondents Case.*

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*To be heard at the Bar of the House of  
Lords, on Thursday the 19th Day of  
February, 1729.*